

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER D. DOMINGO,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 228, 2017

§

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§

§ Court Below—Superior Court

§ of the State of Delaware

§

§ Cr. ID 1604017737 (N)

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Submitted: September 1, 2017

Decided: October 23, 2017

Before **STRINE**, Chief Justice; **VALIHURA** and **TRAYNOR**, Justices

ORDER

This 23rd day of October 2017, after careful consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Peter Domingo, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Domingo's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Domingo pled guilty in December 2016 to one count of Reckless Endangering in the First Degree. On March 10, 2017, the Superior Court sentenced him to a total period of five years at Level V incarceration, to be

suspended after serving one year in prison for decreasing levels of supervision. Domingo did not file a direct appeal.

(3) Instead, on May 1, 2017, he filed a motion for modification of sentence under Superior Court Criminal Rule 35(b). Domingo asked the Superior Court to reduce his one-year prison sentence to six months because his significant mental health issues would be better addressed in a community-based program rather than in a prison setting. Domingo also attached a letter from his elderly mother, who indicated that she needed Domingo's support and assistance at home. Finally, Domingo asserted that if he remained incarcerated for a year, he risked losing his established entertainment business and would be unemployed upon his release.

(4) On May 8, 2017, the Superior Court denied Domingo's motion, holding that his sentence was appropriate for all of the reasons stated at the sentencing hearing. This appeal followed.

(5) In his opening brief, Domingo argues that the Superior Court abused its discretion in denying his motion. Domingo asserts that the Superior Court sentenced him with a closed mind and relied upon facts that were false and disregarded his mental health issues.

(6) We review the Superior Court's denial of a motion for modification of sentence under Superior Court Criminal Rule 35(b) for abuse of discretion.¹ This

¹ *Benge v. State*, 101 A.3d 973, 976-77 (Del. 2014).

standard is highly deferential.² It requires us to consider whether “the trial court acted within a zone of reasonableness or stayed within a range of choices.”³ We will not substitute our views for those of the sentencing judge.⁴

(7) In this case, we find no abuse of the Superior Court’s discretion in denying Domingo’s motion for modification of sentence. The transcript of the sentencing hearing reflects that the judge carefully considered the conflicting information regarding the circumstances under which Domingo obtained certain character references that he presented to the judge. The judge concluded that Domingo had not been truthful regarding how he had obtained a character reference from an employee at the Delaware Department of Justice. Under the circumstances, we conclude that the Superior Court sentenced Domingo within the statutory range of sentences and that there is no support for Domingo’s assertion that the sentencing judge relied upon false evidence, disregarded his mental health issues, or otherwise sentenced him with a closed mind. The Superior Court did not abuse its discretion in denying Domingo’s motion for modification of sentence.

² *Id.* at 977.

³ *State v. Lewis*, 797 A.2d 1198, 1202 (Del. 2002).

⁴ *Id.*

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice